

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

DAVID C. SPENCER,

Plaintiff,

v.

FRANKLIN AMERICAN HOME
MORTGAGE and CITIZENS BANK,
N.A. D/B/A CITIZENS ONE HOME
LOANS,

Defendants.

Case No. _____

NOTICE OF REMOVAL

COMES NOW, Citizens Bank, N.A. d/b/a Citizens One Home Loans (“Citizens”), one of the Defendants in the above-styled civil action, and files this Notice of Removal, hereby removing this action to the United States District Court for the Northern District of Alabama, Southern Division. Citizens states the following grounds in support of removal:

1. On March 28, 2019, Plaintiff David C. Spencer (the “Plaintiff”) filed his Complaint against Franklin American Home Mortgage and Citizens in the Circuit Court of Jefferson County, Alabama. This case is styled as *Spencer v. Franklin American Home Mortg. et al.* and was assigned Case No. 01-CV-2020-

903782.00 (the “State Court Action”). True and correct copies of all filings to date in the State Court Action are, collectively, attached hereto as **Exhibit “A”**.

2. Citizens has not been properly served with process.¹ Accordingly, removal is timely under 28 U.S.C. § 1446(b).

3. FAMC Subsidiary Company² (“FAMC”) consents to removal as evidenced by the signed consent attached hereto.

4. The United States District Court for the Northern District of Alabama, Southern Division, embraces Jefferson County, Alabama. Removal to this Court is therefore proper under 28 U.S.C. § 1441(a).

5. This Notice of Removal is being filed in accordance with 28 U.S.C. § 1446 and Fed. R. Civ. P. 81(c). In compliance with 28 U.S.C. § 1446(d), FAMC and Citizens will, upon docketing of the Notice of Removal in this Court, file a copy of the Notice of Removal with the Clerk of the Circuit Court of Jefferson County, Alabama.

FEDERAL QUESTION JURISDICTION

6. This Court possesses federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the Complaint raises issues and claims under

¹ The Plaintiff attempted to serve Citizens by certified mail addressed to “Citizens Bank, NA, Reg Agent: Ellen Alemany, 1 Citizens Plaza, Providence, RI 02903.” However, Citizens does not have any registered agent or officer by that name. Ms. Alemany appears to be the CEO of CIT Group, a completely unrelated entity. *See* <https://www.cit.com/about-us/executive-management-committee/ellen-alemany/>. Accordingly, service is improper under Ala. R. Civ. P. 4(h)(2)(B) because it was not addressed to “an officer, a partner (other than a limited partner), a managing or general agent, or any agent authorized by appointment or by law to receive service of process.” *See* Ala. R. Civ. P. 4(c)(6).

² The Plaintiff incorrectly names FAMC as Franklin American Home Mortgage. FAMC was formerly known as Franklin American Mortgage Company but changed its name in 2018.

the laws of the United States. Specifically, the Plaintiff alleges a claim arising under the (1) Consumer Credit Protection Act 15 U.S.C. §§ 1681 *et seq*, *see* Compl. at ¶¶ 43-46; and (2) Fair Credit Reporting Act, 15 U.S.C. §§ 1601 *et seq*, *see* Compl. at ¶ 52.

7. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. §§ 1367(a). This Court possesses "supplemental jurisdiction over all state law claims which arise out of a common nucleus of operative fact with a substantial federal claim." *Parker v. Scrap Metal Processors, Inc.*, 468 F.3d 733, 742-43 (11th Cir. 2006) (citation omitted).

8. The Plaintiff's state law claims are: (1) breach of contract (Compl., ¶¶ 20-23); (2) negligence and wantonness (*id.* at ¶¶ 24-27); (3) slander to credit (*id.* at ¶¶ 28-32); (4) fraudulent misrepresentation (*id.* at ¶¶ 33-37); (5) fraud (*id.* at ¶¶ 38-40); (6) negligent and/or wanton training, supervision, and retention (*id.* at ¶¶ 41-42); (7) intentional infliction of emotional distress (*id.* at ¶¶ 47-49); and (8) injunctive relief (*id.* at ¶¶ 50-52) The federal claims and state law claims all arise out of the same set of facts concerning the servicing of the Plaintiff's mortgage loan and the handling of payments. *See id.* at ¶¶ 5-19 (same set of facts relate to all claims). Because the state law claims arise from the same nucleus of operative fact as the federal claims, this Court can properly exercise supplemental jurisdiction over the state law claims at issue.

9. By filing this Notice of Removal, Citizens does not waive any of its jurisdictional objections or affirmative defenses.

WHEREFORE, Citizens prays that the State Court Action proceed in this Court as an action properly removed, and that no further proceedings be had in said State Court Action.

Respectfully submitted, this 16th day of December 2020.

/s/ Amanda M. Beckett

AMANDA M. BECKETT

Alabama Bar No. ASB-1884-N75B

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Attorneys for Citizens Bank, N.A.

CONSENT TO REMOVAL

COMES NOW, FAMC Subsidiary Company,³ by and through counsel, and herby consents to the removal of this action from the Circuit Court of Jefferson County, Alabama.

/s/ Amanda M. Beckett
AMANDA M. BECKETT
Alabama Bar No. ASB-1884-N75B
Attorney for FAMC Subsidiary Company

³ The Plaintiff incorrectly names FAMC as Franklin American Home Mortgage. FAMC was formerly known as Franklin American Mortgage Company but changed its name in 2018.

CERTIFICATE OF SERVICE

I hereby certify that I have, this 16th day of December 2020, served all parties in this matter with the foregoing by placing a true and correct copy of same in the United States Mail, with first-class prepaid postage affixed thereto, properly addressed as follows:

Shane T. Sears
The Sears Firm, P.C.
5809 Feldspar Way, Suite 200
Birmingham, AL 35244

/s/ Amanda M. Beckett
AMANDA M. BECKETT
Alabama Bar No. ASB-1884-N75B